

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MILLER,

Defendant-Appellant.

UNPUBLISHED

May 20, 2003

No. 237808

Wayne Circuit Court

LC No. 99-000329

Before: Cooper, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant was convicted on two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); and two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a). The trial court originally sentenced defendant to life imprisonment and 40 to 80 years' imprisonment for the first-degree criminal sexual conduct convictions. These sentences were to be served concurrently with his sentences of 10 to 15 years' imprisonment for each of the second-degree criminal sexual conduct convictions. This Court vacated defendant's sentences on appeal and remanded for resentencing because the trial court improperly considered defendant's prior felony convictions when scoring the judicial sentencing guidelines. When properly scored, this Court determined that the minimum sentence guidelines range should be 10 to 25 years' imprisonment. At resentencing, the trial court sentenced defendant to 25 to 50 years' imprisonment for each of the first-degree criminal sexual conduct convictions and 8-1/2 to 15 years' imprisonment for each of the second-degree criminal sexual conduct convictions. Defendant appeals as of right. We affirm.

Defendant was convicted of sexually assaulting a five-year-old girl. The girl apparently went to her aunt's house for a "pajama party." While at the house, defendant touched the girl's "private parts" through her clothes. After the girl's clothes were removed by her aunt, defendant penetrated her "private part" and forced her to perform fellatio on him. On remand, the trial court sentenced defendant to the highest minimum sentences allowable under the judicial sentencing guidelines. The trial court described defendant's conduct as "outrageous" and noted the "vile" nature of the offenses. The trial court further commented that society needed to be protected from those who prey on the most vulnerable.

On appeal, defendant contends that his sentences for first-degree criminal sexual conduct are disproportionate to the offense and the offender. Specifically, defendant claims that the trial court failed to adequately consider his lack of recent convictions and his age¹ during resentencing. We disagree. A trial court's sentencing decision is reviewed on appeal for an abuse of discretion. *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). "[A] given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990)

The judicial guidelines are applicable in this case because the offenses were committed before January 1, 1999. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000); see also MCL 769.34(1). "As a general rule, a sentence that falls within the guidelines' range is presumed to be neither excessive nor disparate." *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). The presumption of the validity and fairness of a sentence within the judicial sentencing guidelines is removed if a court finds that "unusual circumstances" exist. *Milbourn, supra* at 660-661; *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992). Unusual circumstances refer to "uncommon" or "rare" factors. *Sharp, supra* at 505. Absent a showing of unusual circumstances, the presumption of proportionality of a sentence within the guidelines range cannot be overcome. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994); *Sharp, supra* at 505-506.

In the instant case, defendant's sentences are presumptively proportionate because they are within the range recommended by the judicial sentencing guidelines. Defendant's age and lack of prior criminal history are not considered to be unusual circumstances requiring a finding that the trial court abused its discretion in imposing a sentence within the guidelines range. See *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995); *Daniel, supra* at 54. Moreover, we note that defendant's conduct was particularly deplorable because he repeatedly took advantage of a five-year-old girl for his own sexual gratification. Accordingly, we find that the trial court did not abuse its discretion in sentencing defendant to the highest minimum sentence under the judicial sentencing guidelines.

Affirmed.

/s/ Jessica R. Cooper
/s/ David H. Sawyer
/s/ William B. Murphy

¹ Defendant was fifty-seven-years-old during resentencing.